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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4182

02/22/2024 Authored by Freiberg, Stephenson, Tabke, Koegel and Kraft
The bill was read for the first time and referred to the Committee on Agriculture Finance and Policy

1.1 A bill for an act
1.2 relating to broadband; establishing the Equal Access to Broadband Act; modifying
1.3 provisions governing broadband services and broadband infrastructure; amending
1.4 Minnesota Statutes 2022, sections 116J.39, subdivision 1; 116J.394; 116J.399,
1.5 subdivisions 1, 8, by adding a subdivision; 237.162, subdivision 4; 237.163,
1.6 subdivisions 2, 6, 7; 412.221, subdivision 6; Minnesota Statutes 2023 Supplement,
1.7 section 222.37, subdivision 1.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2022, section 116J.39, subdivision 1, is amended to read:

1.10 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have
1.11 the meanings given them.

1.12 (b) "Broadband" or "broadband service" means ~~any a service providing advanced~~
1.13 ~~telecommunications capability and~~ that offers to a person or company high-speed Internet
1.14 access with transmission speeds that, at a minimum, meet the Federal Communications
1.15 Commission definition for broadband.

1.16 (c) "Local unit of government" has the meaning given in section 116G.03, subdivision
1.17 3.

1.18 (d) "Office" means the Office of Broadband Development established in subdivision 2,
1.19 paragraph (a).

2.1 Sec. 2. Minnesota Statutes 2022, section 116J.394, is amended to read:

2.2 **116J.394 DEFINITIONS.**

2.3 (a) For the purposes of sections 116J.394 to ~~116J.398~~ 116J.399, the following terms
2.4 have the meanings given them.

2.5 (b) "Broadband" or "broadband service" has the meaning given in section 116J.39,
2.6 subdivision 1, paragraph (b).

2.7 (c) "Broadband infrastructure" means networks of deployed ~~telecommunications~~
2.8 equipment and technologies necessary to provide ~~high-speed Internet access and other~~
2.9 ~~advanced telecommunications services for~~ broadband to end users.

2.10 (d) "Commissioner" means the commissioner of employment and economic development.

2.11 (e) "Last-mile infrastructure" means broadband infrastructure that serves as the final leg
2.12 connecting the broadband service provider's network to the end-use customer's on-premises
2.13 telecommunications equipment.

2.14 (f) "Middle-mile infrastructure" means broadband infrastructure that links a broadband
2.15 service provider's core network infrastructure to last-mile infrastructure.

2.16 (g) "Political subdivision" means any county, city, town, school district, special district
2.17 or other political subdivision, or public corporation.

2.18 (h) "Underserved areas" means areas of Minnesota in which households or businesses
2.19 lack access to wire-line broadband service at speeds of at least 100 megabits per second
2.20 download and at least 20 megabits per second upload.

2.21 (i) "Unserved areas" means areas of Minnesota in which households or businesses lack
2.22 access to wire-line broadband service, as defined in section 116J.39.

2.23 Sec. 3. Minnesota Statutes 2022, section 116J.399, subdivision 1, is amended to read:

2.24 Subdivision 1. **Definitions.** For the purposes of this section, the following terms have
2.25 the meanings given:

2.26 ~~(1) "broadband infrastructure" has the meaning given in section 116J.394, paragraph~~
2.27 ~~(e);~~

2.28 ~~(2)~~ (1) "broadband service" has the meaning given in section ~~116J.394, paragraph (b)~~
2.29 116J.39, subdivision 1, paragraph (b); and

2.30 ~~(3)~~ (2) "provider" means a broadband service provider, but does not include an electric
2.31 cooperative association organized under chapter 308A that provides broadband service.

3.1 Sec. 4. Minnesota Statutes 2022, section 116J.399, subdivision 8, is amended to read:

3.2 Subd. 8. **Local governmental right-of-way management preserved.** (a) The placement
3.3 of broadband infrastructure to provide broadband service under subdivisions 2 to 7: (1) is
3.4 subject to local government ~~permitting and right-of-way management authority under section~~
3.5 237.163, franchising or other municipal authorization under subdivision 10; and (2) must
3.6 be coordinated with the relevant local government unit in order to minimize potential future
3.7 relocations. The provider must notify a local government unit prior to placing infrastructure
3.8 for broadband service in an easement that is in or adjacent to the local government unit's
3.9 public right-of-way.

3.10 (b) Nothing in this section applies to a public utility easement.

3.11 Sec. 5. Minnesota Statutes 2022, section 116J.399, is amended by adding a subdivision
3.12 to read:

3.13 Subd. 10. **Political subdivisions; franchise or municipal authorization.** (a) A political
3.14 subdivision may require a provider furnishing broadband within the political subdivision
3.15 to obtain a franchise or other municipal authorization in accordance with the terms,
3.16 conditions, and limitations of the political subdivision's regulatory acts, including but not
3.17 limited to regulatory acts governing the placing of lines and facilities above ground or
3.18 underground.

3.19 (b) Pursuant to a franchise or other municipal authorization required under paragraph
3.20 (a), a political subdivision may require a provider to pay the political subdivision fees to
3.21 (1) raise revenue, (2) defray increased municipal costs that accrue as a result of right-of-way
3.22 occupation, or (3) both. The fee may include but is not limited to a sum of money based on
3.23 the gross operating revenues or gross earnings resulting from the provider's operations to
3.24 provide broadband within the political subdivision for the duration of time the provider
3.25 continues to operate within the political subdivision.

3.26 Sec. 6. Minnesota Statutes 2023 Supplement, section 222.37, subdivision 1, is amended
3.27 to read:

3.28 Subdivision 1. **Use requirements.** (a) Any water power, telegraph, telephone, broadband,
3.29 pneumatic tube, pipeline, community antenna television, cable communications or electric
3.30 light, heat, power company, entity that receives a route permit under chapter 216E for a
3.31 high-voltage transmission line necessary to interconnect an electric power generating facility
3.32 with transmission lines or associated facilities of an entity that directly, or through its
3.33 members or agents, provides retail electric service in the state, or fire department may use

4.1 public roads for the purpose of constructing, using, operating, and maintaining lines, subways,
 4.2 canals, conduits, transmission lines, hydrants, or dry hydrants, for their business, but such
 4.3 lines shall be so located as in no way to interfere with the safety and convenience of ordinary
 4.4 travel along or over the same; and, in the construction and maintenance of such line, subway,
 4.5 canal, conduit, transmission lines, hydrants, or dry hydrants, the entity ~~shall be~~ is subject
 4.6 to municipal franchising requirements under section 116J.399, subdivision 10, including
 4.7 compensation, as well as all reasonable regulations imposed by the governing body of any
 4.8 county, town or city in which such public road may be.

4.9 (b) If the governing body does not require the entity to obtain a franchise or permit, an
 4.10 entity shall notify the governing body of any county, town, or city having jurisdiction over
 4.11 a public road prior to the construction or major repair, involving extensive excavation on
 4.12 the road right-of-way, of the entity's equipment along, over, or under the public road, unless
 4.13 the governing body waives the notice requirement. A waiver of the notice requirement must
 4.14 be renewed on an annual basis.

4.15 (c) For emergency repair an entity shall notify the governing body as soon as practical
 4.16 after the repair is made.

4.17 (d) Nothing herein shall be construed to grant to any person any rights ~~for the maintenance~~
 4.18 ~~of~~ to construct and maintain a telegraph, telephone, pneumatic tube, community antenna
 4.19 ~~television system, system or network that provides telecommunications, broadband, cable~~
 4.20 ~~communications system, or light, heat, power system, electric power generating system,~~
 4.21 ~~high-voltage transmission line, or hydrant system, gas, electric, or other utility service~~ within
 4.22 the corporate limits of any city until ~~such the person shall have~~ has obtained a franchise or
 4.23 other municipal authorization that grants the right to construct and maintain such the system
 4.24 within such the city or for a period beyond that for which the right to operate such the system
 4.25 is granted by such the city. Authority granted under this paragraph must be granted before
 4.26 the person provides the service. A company that provides multiple services to the public
 4.27 must obtain a franchise or specific municipal authorization to provide each service.

4.28 Sec. 7. Minnesota Statutes 2022, section 237.162, subdivision 4, is amended to read:

4.29 Subd. 4. **Telecommunications right-of-way user.** (a) "Telecommunications right-of-way
 4.30 user" means a person owning or controlling a facility in the public right-of-way, or seeking
 4.31 to own or control a facility in the public right-of-way, that is used or is intended to be used
 4.32 ~~for providing wireless service, or transporting to provide telecommunications or other voice~~
 4.33 ~~or data information service.~~

5.1 (b) For purposes of this section and section 237.163, telecommunications service does
 5.2 not include: (1) cable service, as defined under United States Code, title 47, section 522(6);
 5.3 or (2) broadband service, as defined under section 116J.39, subdivision 1.

5.4 ~~(b)~~ (c) A cable communication system defined and regulated under chapter 238, and an
 5.5 entity that solely provides broadband services, as defined under section 116.39, subdivision
 5.6 1, telecommunications activities related to providing natural gas or electric energy services,
 5.7 a public utility as defined in section 216B.02, a municipality, a municipal gas or power
 5.8 agency organized under chapter 453 or 453A, or a cooperative electric association organized
 5.9 under chapter 308A, are not telecommunications right-of-way users for the purposes of this
 5.10 section and section 237.163, except to the extent these entities are offering wireless services.

5.11 Sec. 8. Minnesota Statutes 2022, section 237.163, subdivision 2, is amended to read:

5.12 Subd. 2. **Generally.** (a) Subject to this section, a telecommunications right-of-way user
 5.13 authorized to do business under the laws of this state or by license of the Federal
 5.14 Communications Commission may construct, maintain, and operate small wireless facilities,
 5.15 conduit, cable, switches, and related appurtenances and facilities along, across, upon, above,
 5.16 and under any public right-of-way.

5.17 (b) Subject to this section, a local government unit has the authority to franchise and
 5.18 manage its public rights-of-way, receive compensation for use and occupancy, and to recover
 5.19 its rights-of-way management costs. Except as provided in subdivisions 3a, 3b, and 3c, the
 5.20 authority defined in this section may be exercised at the option of the local government unit
 5.21 and is not mandated under this section. A local government unit may, by ordinance:

5.22 (1) require a telecommunications right-of-way user seeking to excavate or obstruct a
 5.23 public right-of-way for the purpose of providing telecommunications services to obtain a
 5.24 right-of-way permit to do so and to impose permit conditions consistent with the local
 5.25 government unit's management of the right-of-way;

5.26 (2) require a telecommunications right-of-way user using, occupying, or seeking to use
 5.27 or occupy a public right-of-way for the purpose of providing telecommunications services
 5.28 to register with the local government unit by providing the local government unit with the
 5.29 following information:

5.30 (i) the applicant's name, gopher state one-call registration number under section 216D.03,
 5.31 address, and telephone and facsimile numbers;

5.32 (ii) the name, address, and telephone and facsimile numbers of the applicant's local
 5.33 representative;

6.1 (iii) proof of adequate insurance; and

6.2 (iv) other information deemed reasonably necessary by the local government unit for
6.3 the efficient administration of the public right-of-way; and

6.4 (3) require telecommunications right-of-way users to submit to the local government
6.5 unit plans for construction and major maintenance that provide reasonable notice to the
6.6 local government unit of projects that the telecommunications right-of-way user expects to
6.7 undertake that may require excavation and obstruction of public rights-of-way.

6.8 (c) A local government unit may also require a telecommunications right-of-way user
6.9 that is registered with the local government unit pursuant to paragraph (b), clause (2), to
6.10 periodically update the information in its registration application.

6.11 (d) Notwithstanding sections 394.34 and 462.355, or any other law, a local government
6.12 unit must not establish a moratorium with respect to:

6.13 (1) filing, receiving, or processing applications for right-of-way or small wireless facility
6.14 permits; or

6.15 (2) issuing or approving right-of-way or small wireless facility permits.

6.16 (e) A telecommunications right-of-way user may place a new wireless support structure
6.17 or collocate small wireless facilities on wireless support structures located within a public
6.18 right-of-way, subject to the approval procedures under this section and, for collocation on
6.19 wireless support structures owned by a local government unit, the reasonable terms,
6.20 conditions, and rates set forth under this section. A local government unit may prohibit,
6.21 regulate, or charge a fee to install wireless support structures or to collocate small wireless
6.22 facilities only as provided in this section.

6.23 (f) The placement of small wireless facilities and wireless support structures to
6.24 accommodate small wireless facilities are a permitted use in a public right-of-way, except
6.25 that a local government unit may require a person to obtain a special or conditional land
6.26 use permit to install a new wireless support structure for the siting of a small wireless facility
6.27 in a right-of-way in a district or area zoned for single-family residential use or within a
6.28 historic district established by federal or state law or city ordinance as of the date of
6.29 application for a small wireless facility permit. This paragraph does not apply to areas
6.30 outside a public right-of-way that are zoned and used exclusively for single-family residential
6.31 use.

7.1 Sec. 9. Minnesota Statutes 2022, section 237.163, subdivision 6, is amended to read:

7.2 Subd. 6. Fees. (a) In addition to franchise consideration, which may include compensation
 7.3 for use and occupancy, a local government unit may recover its right-of-way management
 7.4 costs by imposing a fee for registration, a fee for each right-of-way or small wireless facility
 7.5 permit, or, when appropriate, a fee applicable to a particular telecommunications right-of-way
 7.6 user when that user causes the local government unit to incur costs as a result of actions or
 7.7 inactions of that user. A local government unit may not recover costs from a
 7.8 telecommunications right-of-way user or an owner of a cable communications system
 7.9 awarded a franchise under chapter 238 caused by another entity's activity in the right-of-way.

7.10 (b) Fees, or other right-of-way obligations, imposed by a local government unit on
 7.11 telecommunications right-of-way users under this section to recover right-of-way
 7.12 management costs must be:

7.13 ~~(1) based on the actual costs incurred by the local government unit in managing the~~
 7.14 ~~public right-of-way;~~

7.15 ~~(2) based on an allocation among all users of the public right-of-way, including the local~~
 7.16 ~~government unit itself, which shall reflect the proportionate costs imposed on the local~~
 7.17 ~~government unit by each of the various types of uses of the public rights-of-way;~~

7.18 ~~(3)~~ (1) imposed on a competitively neutral basis; and

7.19 ~~(4)~~ (2) imposed in a manner so that aboveground uses of public rights-of-way do not
 7.20 bear costs incurred by the local government unit to regulate underground uses of public
 7.21 rights-of-way.

7.22 (c) The rights, duties, and obligations regarding the use of the public right-of-way
 7.23 imposed under this section must be applied to all users of the public right-of-way, including
 7.24 the local government unit while recognizing regulation must reflect the distinct engineering,
 7.25 construction, operation, maintenance and public and worker safety requirements, and
 7.26 standards applicable to various users of the public rights-of-way. For users subject to the
 7.27 franchising authority of a local government unit, to the extent those rights, duties, and
 7.28 obligations are addressed in the terms of an applicable franchise agreement, the terms of
 7.29 the franchise shall prevail over any conflicting provision in an ordinance.

7.30 (d) A wireless service provider may collocate small wireless facilities on wireless support
 7.31 structures owned or controlled by a local government unit and located within the public
 7.32 roads or rights-of-way without being required to apply for or enter into any individual
 7.33 license, franchise, or other agreement with the local government unit or any other entity,

8.1 other than a standard small wireless facility collocation agreement under subdivision 3a,
8.2 paragraph (f), if the local unit of government elects to utilize such an agreement.

8.3 (e) Any initial engineering survey and preparatory construction work associated with
8.4 collocation must be paid by the cost causer in the form of a onetime, nonrecurring,
8.5 commercially reasonable, nondiscriminatory, and competitively neutral charge to recover
8.6 the costs associated with a proposed attachment.

8.7 (f) Total application fees for a small wireless facility permit must comply with this
8.8 subdivision with respect to costs related to the permit.

8.9 (g) A local government unit may elect to charge each small wireless facility attached to
8.10 a wireless support structure owned by the local government unit a fee, in addition to other
8.11 fees or charges allowed under this subdivision, consisting of:

8.12 (1) up to \$150 per year for rent to occupy space on a wireless support structure;

8.13 (2) up to \$25 per year for maintenance associated with the space occupied on a wireless
8.14 support structure; and

8.15 (3) a monthly fee for electricity used to operate a small wireless facility, if not purchased
8.16 directly from a utility, at the rate of:

8.17 (i) \$73 per radio node less than or equal to 100 max watts;

8.18 (ii) \$182 per radio node over 100 max watts; or

8.19 (iii) the actual costs of electricity, if the actual costs exceed the amount in item (i) or
8.20 (ii).

8.21 Sec. 10. Minnesota Statutes 2022, section 237.163, subdivision 7, is amended to read:

8.22 Subd. 7. **Additional right-of-way provisions.** (a) In managing the public rights-of-way
8.23 and in imposing fees under this section, no local government unit may:

8.24 (1) unlawfully discriminate among telecommunications right-of-way users;

8.25 (2) grant a preference to any telecommunications right-of-way user; or

8.26 (3) create or erect any unreasonable requirement for entry to the public rights-of-way
8.27 by telecommunications right-of-way users; ~~or.~~

8.28 ~~(4) require a telecommunications right-of-way user to obtain a franchise or pay for the~~
8.29 ~~use of the right-of-way.~~

9.1 (b) A telecommunications right-of-way user need not apply for or obtain right-of-way
 9.2 permits for facilities that are located in public rights-of-way on May 10, 1997, for which
 9.3 the user has obtained the required consent of the local government unit, or that are otherwise
 9.4 lawfully occupying the public right-of-way. However, the telecommunications right-of-way
 9.5 user may be required to: (1) comply with all requirements imposed as allowed under this
 9.6 section; and (2) register and to obtain a right-of-way permit for an excavation or obstruction
 9.7 of existing facilities within the public right-of-way after May 10, 1997.

9.8 (c) Data and documents exchanged between a local government unit and a
 9.9 telecommunications right-of-way user are subject to the terms of chapter 13. A local
 9.10 government unit not complying with this paragraph is subject to the penalties set forth in
 9.11 section 13.08.

9.12 ~~(d) A local government unit may not collect a fee imposed under this section through~~
 9.13 ~~the provision of in-kind services by a telecommunications right-of-way user, nor may a~~
 9.14 ~~local government unit require the provision of in-kind services as a condition of consent to~~
 9.15 ~~use the local government unit's public right-of-way or to obtain a small wireless facility~~
 9.16 ~~permit.~~

9.17 ~~(e) Except as provided in this chapter or required by federal law, a local government~~
 9.18 ~~unit shall not adopt or enforce any regulation on the placement or operation of~~
 9.19 ~~communications facilities in the right-of-way where the entity is already authorized to~~
 9.20 ~~operate in the right-of-way, and shall not regulate or impose or collect fees on~~
 9.21 ~~communications services except to the extent specifically provided for in the existing~~
 9.22 ~~authorization, and unless expressly required by state or federal statute.~~

9.23 Sec. 11. Minnesota Statutes 2022, section 412.221, subdivision 6, is amended to read:

9.24 Subd. 6. **Public ways and grounds.** (a) The council ~~shall have~~ has the power to lay out,
 9.25 open, change, widen or extend streets, alleys, parks, squares, and other public ways and
 9.26 grounds and to grade, pave, repair, control, and maintain the same; to establish and maintain
 9.27 drains, canals, and sewers; to alter, widen or straighten watercourses; to lay, repair, or
 9.28 otherwise improve or discontinue sidewalks, paths, and crosswalks.

9.29 ~~It shall have~~ (b) The council has the power: (1) to franchise the occupants and users of
 9.30 public right-of-way; (2) to receive compensation; and (3) by ordinance to regulate the use
 9.31 of streets and other public grounds to the extent provided in other applicable law, to prevent
 9.32 encumbrances or obstructions, and to require the owners or occupants of buildings and the
 9.33 owners of vacant lots to remove any snow, ice, dirt, or rubbish from the sidewalks adjacent

- 10.1 thereto and in default thereof to cause such encumbrances, obstructions, or substances to
- 10.2 be removed and the cost to be assessed against the property as a special assessment.